IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13624 of 2007
With
SPECIAL CIVIL APPLICATION No. 13625 of 2007
To
SPECIAL CIVIL APPLICATION No. 13626 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JYOTINDRA CHHOTALAL DAVE & 2 - Petitioner(s)
Versus
GUJARAT STATE ELECTRICITY COP LTD & 1 - Respondent(s)

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Appearance :
MR TR MISHRA for Petitioner(s) : 1 - 3.
MS LILU K BHAYA for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 26/12/2007

ORAL JUDGMENT

1. The petitioners have challenged the order dated

7.5.2007 passed by the respondent Electricity Company, whereby the promotion order offered to the petitioners is withdrawn and the higher pay-scale granted earlier is also withdrawn. The petitioners have also challenged the order dated 11.5.2007, which has been passed as a consequence of the earlier order dated 7.5.2007 (Annexure “A”) and the petitioners are placed in the original pay-scale of Rs.4000-10025.

2. Heard Mr.Mishra, learned Counsel appearing for the petitioners and Ms.Bhaya, learned Counsel for the respondent Electricity Company.

3. Upon hearing the learned Counsel appearing for both the sides, it appears that there is no dispute on the point that the petitioners were initially appointed as Jr. Assistants and thereafter, were given promotion as Sr. Assistants. Thereafter, as higher posts for promotion were not available and the petitioners had completed the requisite length of service, as per the policy, higher pay-scales were offered to the petitioners of Dy. Superintendent and also of the Superintendent (two scales

higher than the original scale). It appears that after the benefits of higher pay-scales were conferred upon the petitioners, the respondent Electricity Company posted the petitioners on the post of Dy. Superintendent by way of promotion, for which higher pay-scale benefits were already given. It may also be recorded that at the time when the higher pay-scales were given, undertakings were given by the petitioner concerned to accept the promotion as and when offered of higher cadre and if the promotion is not accepted by the petitioner concerned, the Board/Electricity Company was entitled to withdraw the same.

4. It appears that the petitioners did not accept the promotion on the post of Dy. Superintendent and as a consequence thereof, the benefits of two higher pay-scales already granted to the petitioners were withdrawn by the Electricity Company and thereafter, the re-fixation of the pay-scales to the original cadre of Sr. Assistants were also made and under these circumstances, the present petition.

5. In view of the undertaking given by the petitioners for acceptance of the promotion and to abide by the withdrawal thereof if the promotion is not accepted by the petitioners, the petitioners cannot be heard to say that they would not accept the promotion and would continue to enjoy the benefits of higher pay-scales. I would have examined the matter further, however, Mr.Mishra, learned Counsel appearing for the petitioners, declared before the Court that the petitioners shall accept the promotion order and join at the post, which has been offered to them latest by 20th January, 2008. However, he further declared before the Court that even if the petitioners join at the post of Dy. Superintendent, the existing pay-scale of Rs.6500-11750 be continued.

6. Ms.Bhaya, learned Counsel appearing for the respondent Electricity Company submitted that the benefits already granted would continue so long as the petitioners continue to accept the promotion as and when offered and, therefore, at this stage, when the promotion offered is to the

post of Dy. Superintendent, the existing pay-scale would be continued.

7. Under these circumstances, if the petitioners join the duty by 20th January, 2008 at the post over which the promotion is granted to the petitioners, the existing pay-scale of Rs.6500-11750 would continue, but with the condition that when the petitioner(s) is/are further offered promotion to the post of Superintendent, the same shall also be accepted by petitioner(s) concerned as per the undertaking given.

8. In view of the aforesaid, as the petitioner(s) is/are to join at the transferred place by way of promotion, the impugned orders for withdrawal of the higher pay-scale would not survive. However, it is clarified that if there is any failure on the part of the petitioners to abide by the declaration made before this Court, the respondent Board/Electricity Company shall be at liberty to implement the impugned orders.

9. The petitions are disposed of in terms of the aforesaid observations and directions. Subject to the aforesaid observations and directions,

Rule discharged. I.R. vacated.

26.12.2007 **(Jayant Patel, J.)**

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